



Community Development Department

BISMARCK BOARD OF ADJUSTMENT MEETING AGENDA

October 1, 2020

Tom Baker Meeting Room	5:00 p.m.	City-County Office Building
------------------------	-----------	-----------------------------

Watch live meeting coverage on Government Access Channels 2 & 602HD, listen to Radio Access 102.5 FM Radio, or stream FreeTV.org and RadioAccess.org. Agenda items can be found online at www.bismarcknd.gov/agendacenter.

Due to ongoing public health concerns related to COVID-19, the City of Bismarck is encouraging citizens to provide their comments for public hearing items on this agenda via email to planning@bismarcknd.gov. The comments will be sent to the Board of Adjustment members prior to the meeting and included in the minutes of the meeting. To ensure your comments are received and distributed prior to the meeting, please submit them by 12noon on the day of the meeting and reference the agenda item your comment addresses.

If you would like to appear via video or audio link for a 3-5-minute comment on a public hearing item, please provide your e-mail address and contact information to planning@bismarcknd.gov at least one business day before the meeting.

The physical meeting room will be open to the public, but we certainly understand the public wishing to limit their exposure at this time, while still participating in government. Before entering the City-County Office Building, all individuals should self-screen for COVID-19 symptoms or potential exposure and, if unable

to pass the screening protocol, will be expected to participate remotely in the meeting for the public's safety.

Most of the Board of Adjustment members will be attending this meeting in person, but it is anticipated that some may participate remotely. The number of meeting participants attending in person in the Tom Baker Meeting Room, including the Board of Adjustment members, will be required to maintain social distancing.



1. Consider the minutes of the September 3, 2020 meeting of the Board of Adjustment.

PUBLIC HEARING

2. **Section 14-04-01(6) of the City Code of Ordinances (RR – Residential / Rear Yard) –** Lots 8 and 9, Block 1, Lindteigens Landing (4635 Glenwood Drive) | VAR2020-009

Owner / Applicant: Joel and Becky Roloff

Board Action: ☐approve ☐continue ☐table ☐deny.....1

OTHER BUSINESS

3. **Other.** Business

ADJOURNMENT

4. **Adjournment.** The next regular meeting date is scheduled for November 5, 2020



STAFF REPORT

City of Bismarck
Community Development Department
Planning Division

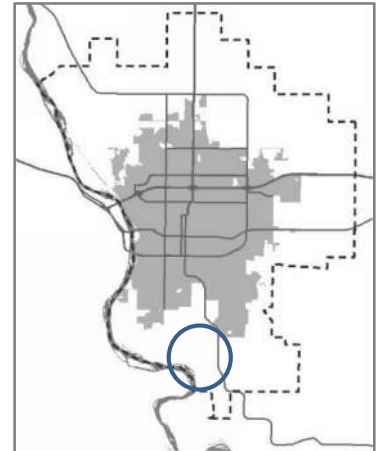
Agenda Item 2
October 1, 2020

Application for: Variance

TRAKiT Project ID: VAR2020-009

Project Summary

Title:	Lots 8 and 9, Block 1, Lindteigens Landing (4635 Glenwood Drive)
Status:	Board of Adjustment
Owner(s):	Joel and Becky Roloff
Project Contact:	Becky Roloff
Location:	South of Bismarck, east of South Washington Street and north of 48 th Avenue NE, along the northeast side of Glenwood Drive
Request:	Section 14-04-01(6) of the City Code of Ordinances (RR – Residential / Rear Yard)



Staff Analysis

Joel and Becky Roloff are requesting a variance to reduce the required rear yard setback located along the northeast side of their property from 50 feet to 38 feet in order to construct a 576 square foot accessory building.

A 33-foot easement is located along the northeast side of the plat, in the rear yard of Lots 3-9 and a portion of Lot 10, Block 1. This easement was reserved for a future roadway in this location. The proposed accessory building would be located outside of this easement.

Easements for stormwater conveyance or drainage are not shown on the plat. Easements for stormwater conveyance or drainage may not have been a requirement when the plat was approved in 1994.

Portions of the property are located within the Special Flood Hazard Area (SFHA), which includes the 100-year floodplain and floodway, and 500-year floodplain. Floodplain regulations outlined in Section 14-04-19 do not apply to the 500-year floodplain. According to the site plan submitted with the application, the proposed accessory building would be located within the 500-year floodplain. An official

FIRMette document from FEMA identifying the SFHA and 500-year floodplain is attached.

Applicable Provision(s) of Zoning Ordinance

Section 14-02-03 of the City Code of Ordinances (Definitions) defines a variance as, "A device which grants a property owner relief from certain provisions of the zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or desire to increase the financial return."

Section 14-01-01(6) of the City Code of Ordinances (RR – Residential / Rear Yard) states, "Each lot or premises shall have a rear yard depth of not less than fifty (50) feet." According to the site plan submitted with the application, the proposed 576 square foot accessory building would be located 38 feet from the rear property line located along the northeast side of the property.

Required Findings of Fact

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not

(continued)

generally applicable to other properties in this area and within RR – Residential zoning district.

2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Staff Recommendation

Staff recommends reviewing the above findings, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

Attachments

1. Location Map
2. Aerial Map
3. FIRMette
4. Site Plan
5. Photos of Property
6. Written Statement of Hardship

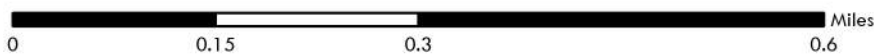
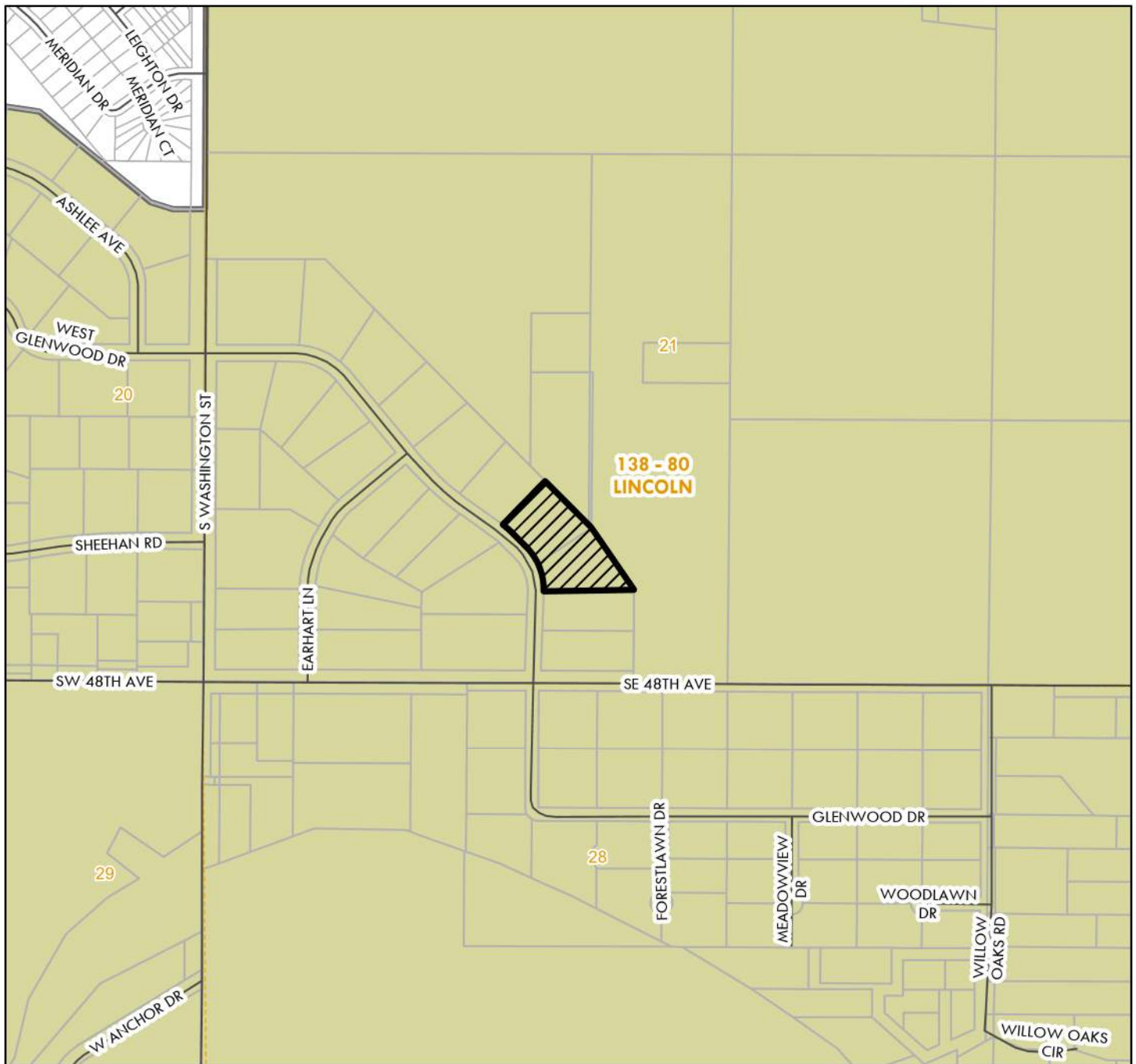
Staff report prepared by: Jenny Wollmuth, AICP, CFM, Senior Planner
701-355-1845 | jwollmuth@bismarcknd.gov




Location Map

LINDTEIGENS LANDING, L8-9, B1

VAR2020-009



 City Limits

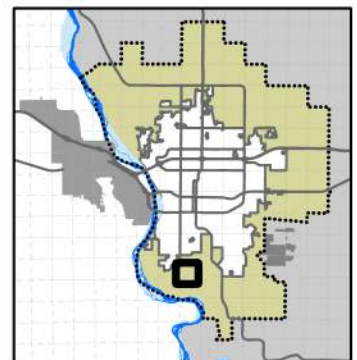
 County Outside ETA

 Bismarck ETA Jurisdiction

**Section, township, and
range indicated in orange**

City of Bismarck
Community Development Department
Planning Division
September 1, 2020 (HLB)

This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.

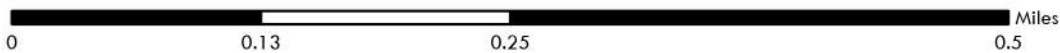
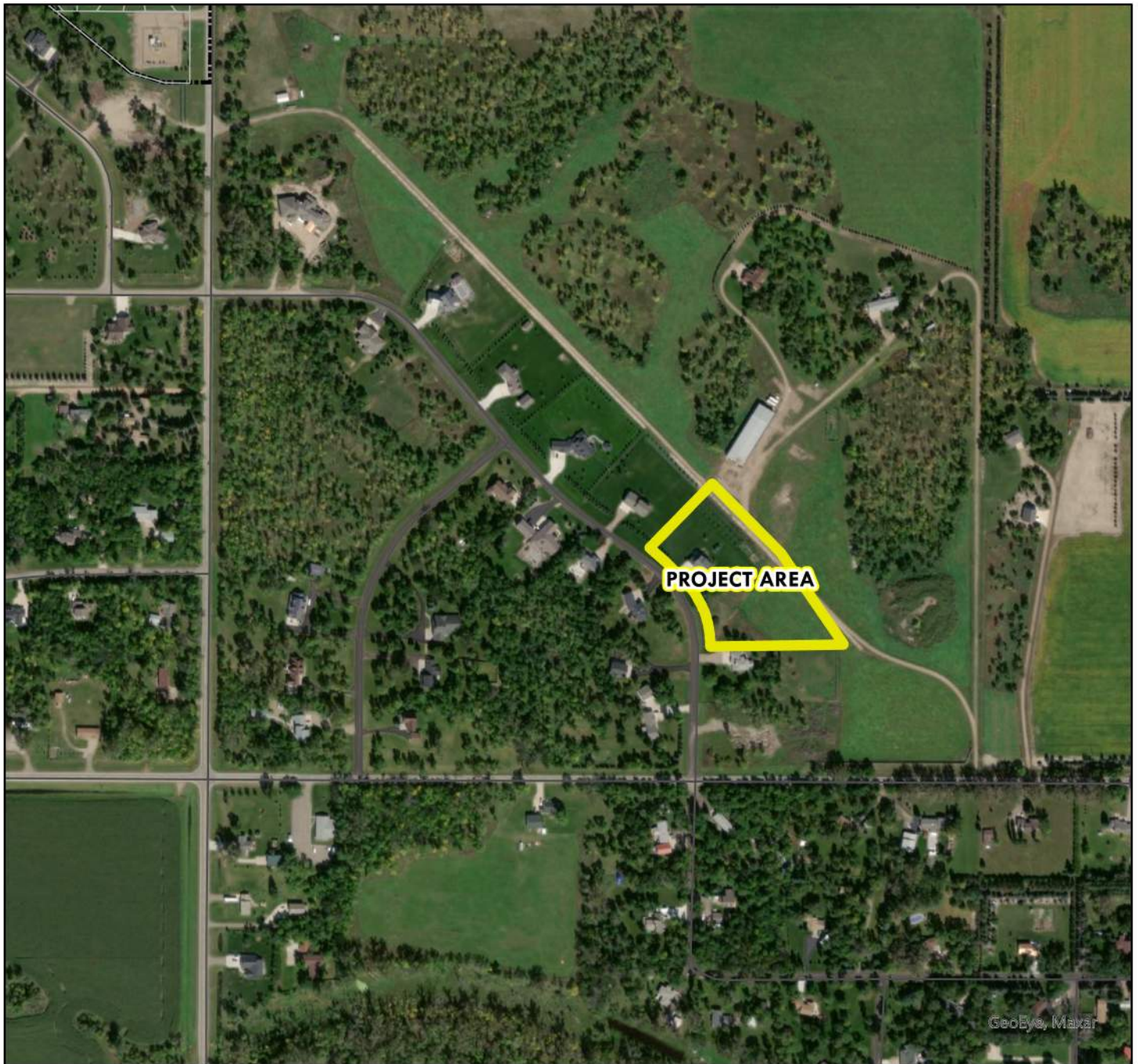




Aerial Map

LINDTEIGENS LANDING, L8-9, B1

VAR2020-009

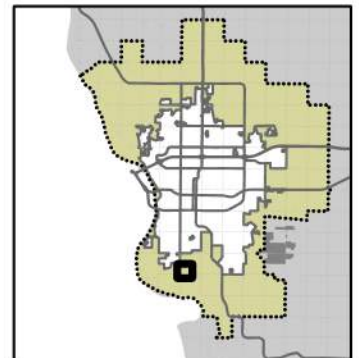


Bismarck ETA Jurisdiction

Aerial Imagery from 2019

City of Bismarck
Community Development Department
Planning Division
September 23, 2020

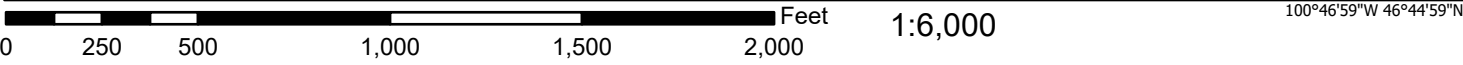
This map is for representational use only and does not represent a survey. No liability is assumed as to the accuracy of the data delineated hereon.



National Flood Hazard Layer FIRMette



100°47'36"W 46°45'24"N



Legend

SEE FIS REPORT

SPECIAL FLOOD HAZARD AREA

OTHER AREAS OF FLOOD HAZARD

OTHER AREAS OF FLOOD HAZARD

GENERAL STRUCTURE

OTHER FEATURES

MAP PAN

This map is a digital flood hazard map. The base map is an aerial photograph. The flood hazard information was derived from a digital elevation model (DEM) and was exported from a GIS. The flood hazard information reflects the best available data at the time of the map's creation. The flood hazard information is not a guarantee of accuracy and is not to be used for regulatory purposes.

This map is a digital flood hazard map. The base map is an aerial photograph. The flood hazard information was derived from a digital elevation model (DEM) and was exported from a GIS. The flood hazard information reflects the best available data at the time of the map's creation. The flood hazard information is not a guarantee of accuracy and is not to be used for regulatory purposes.



SELECT WATER COURSE

SELECT FLOOD LEVEL



☒ 100yr Floodplain



☒ 500yr Floodplain

Flood Model Info

Missouri River ▾

0ft 9ft 10ft 11ft 12ft 13ft 14ft 15ft 16ft 17ft 18ft 19ft 20ft 21ft

Find address, street or subdivision



Identify Results

Elevation: 1633 feet

The elevation in this tool is based on the collected Spring 2019 contours. (Data obtained from Digital Orthophotography)

Tax Parcel: 38-138

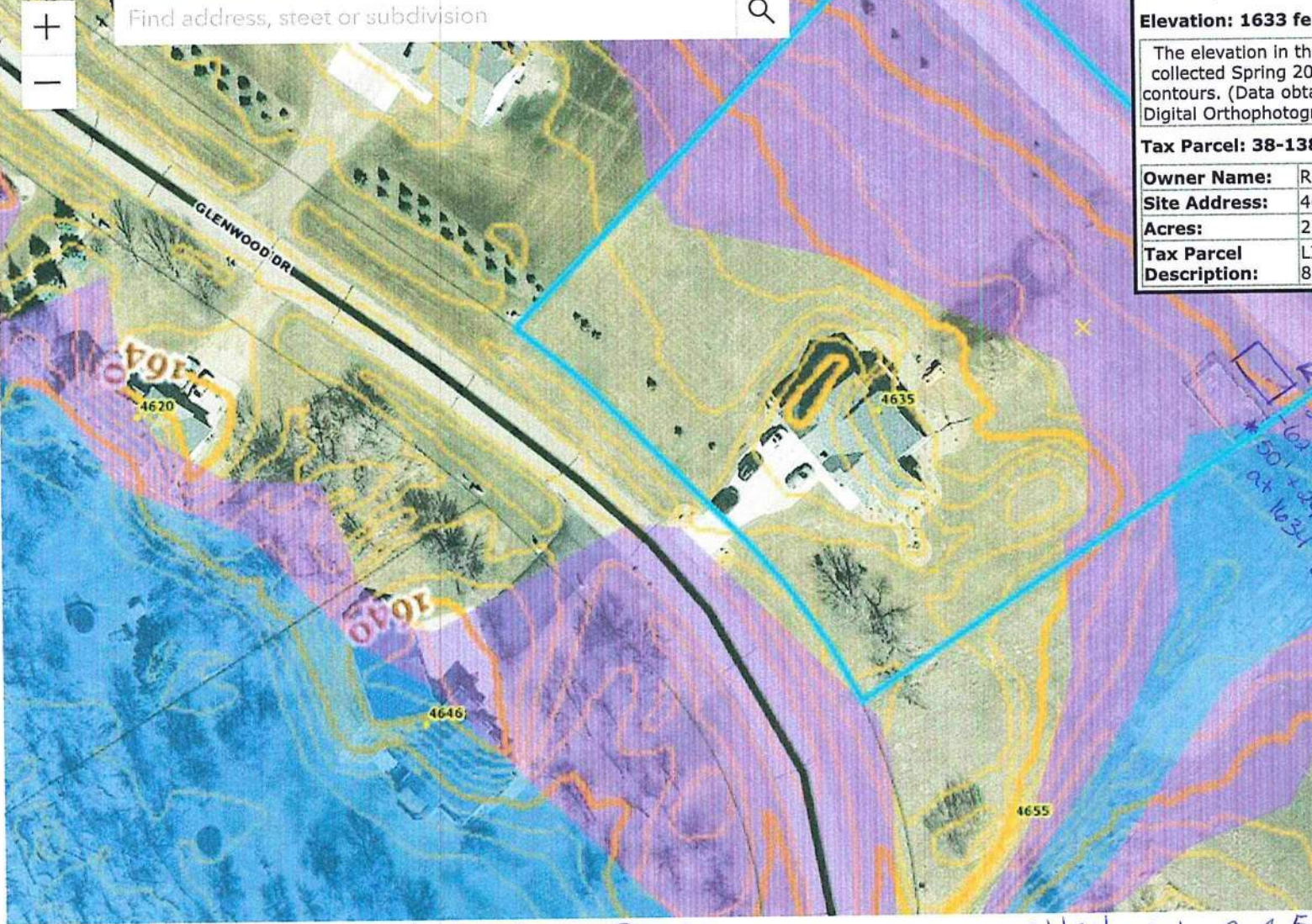
Owner Name: ROLOFF, JOEL

Site Address: 4635 GLENWOOD DR

Acres: 2.1

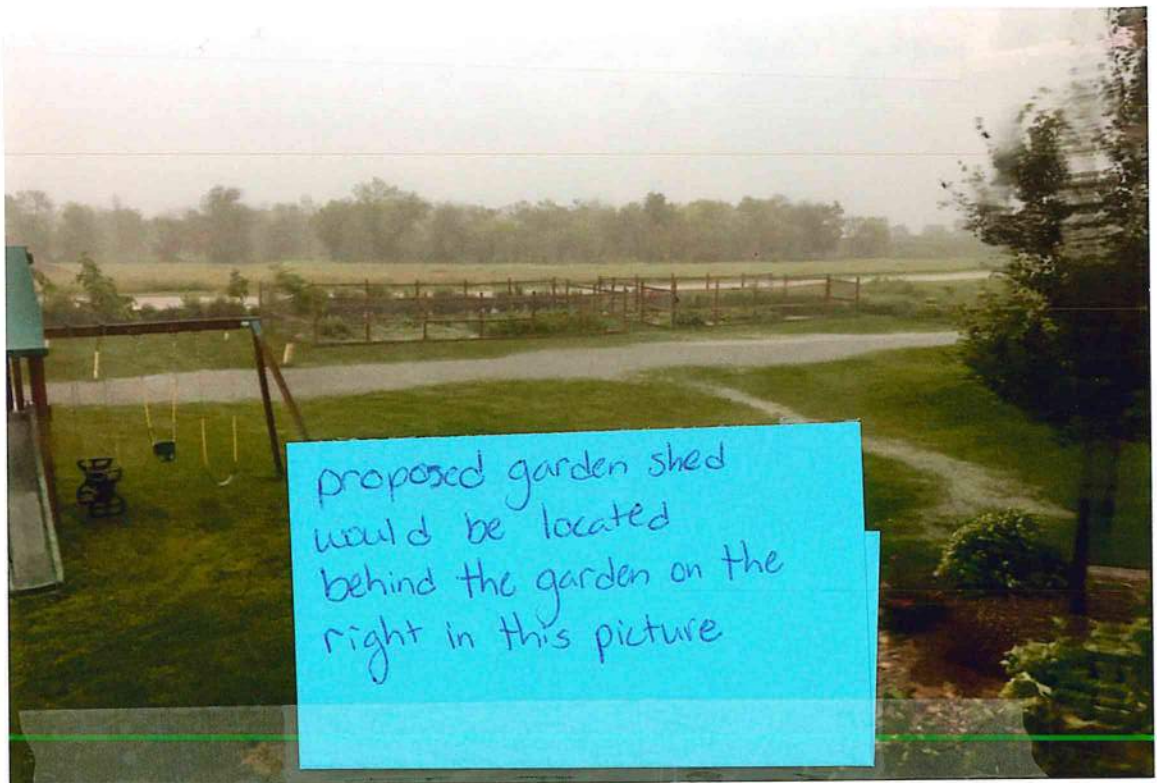
Tax Parcel Description: L1

8



- Bridge (County)
- Low Water Crossing
- Road Closure
- Water Gage (County)
- Water Gage (USGS)

Joel + Becky Roloff variance request attachment 2 of 5







City of Bismarck
Community Development Department
Planning Division
Phone: 701-355-1840 * FAX: 701-222-6450 * TDD: 711
PO Box 5503 * Bismarck, ND 58506-5503
planning@bismarcknd.gov

Last Revised: 01/2017

WRITTEN STATEMENT OF HARDSHIP (VARIANCE REQUEST)

NOTE: WRITTEN STATEMENTS OF HARDSHIP MUST ACCOMPANY EVERY VARIANCE REQUEST APPLICATION

PROPERTY INFORMATION	
Property Address or Legal Description: (Lot, Block, Addition/Subdivision)	4635 Glenwood Dr Bismarck ND 58504 Lot 8, Block 1, Lindteigen's Landing, Township 138 North
Location of Property:	<input type="checkbox"/> City of Bismarck <input checked="" type="checkbox"/> ETA
Type of Variance Requested:	Appeal 50' Setback from rear lot line
Applicable Zoning Ordinance: (Chapter/Section)	ch 14-04-01 RR Residential District Page 187
Describe how the strict application of the requirements of the Zoning Ordinance would limit the use of the property. (Only limitations due to physical or topographic features – such as an irregularly shaped, narrow, shallow or steep lot or other exceptional physical or topographic condition – that are unique characteristics and not applicable to other properties in the neighborhood are eligible for a variance. Variances cannot be granted on the basis of economic hardship or inconvenience.)	
We would like to build a garden shed which is in conformance of the applicable land use of our lot. We are requesting the reduction of the required 50 foot setback from the rear lot line to a 38 foot setback.	
Describe how these limitations would deprive you of reasonable use of the land or building involved, and result in unnecessary hardship.	
To bring the proposed shed's placement into conformance with the required 50 foot setback from the rear lot line would encroach into the 100 year flood plain (see attached flood plain map) and also would require the relocation of an existing drainage swale. This existing drainage swale in essence serves as the rear lot storm water conveyance for not only our property but several of the properties to the west of our lot (see attached photos from 2019 rainstorm).	
Describe how the variance requested is the minimum variance necessary to allow reasonable use of the property.	
Anything greater than the 38 foot setback from the rear lot line will require encroachment into the 100 year flood plain and will require the relocation of an existing neighborhood drainage swale.	

**BISMARCK BOARD OF ADJUSTMENT
MEETING MINUTES
August 6, 2020**

The Bismarck Board of Adjustment met on August 6, 2020, at 5:00 p.m. in the Tom Baker Meeting Room in the City-County Office Building, 221 North 5th Street. Due to ongoing public health concerns related to COVID-19, the meeting was held via Zoom. Chair Marback presided and was present in the Tom Baker Meeting Room.

Members present were Jennifer Clark, Ken Hoff, Michael Marback, Curtis Janssen, Chris Seifert and Rick Wohl.

Staff members present were Ben Ehreth – Community Development Director, Brady Blaskowski – City Building Official, Jannelle Combs – City Attorney, Jenny Wollmuth – Planner and Hilary Balzum – Community Development Administrative Assistant.

MINUTES:

Chair Marback called for approval of the minutes of the July 2, 2020 meeting of the Board of Adjustment.

MOTION: A motion was made by Mr. Seifert and seconded by Mr. Hoff to approve the minutes of the July 2, 2020 meeting, as presented. With Board Members Clark, Janssen, Marback, Hoff, Seifert and Wohl voting in favor, the minutes were approved.

VARIANCE FROM SECTION 14-04-21.2(3)(D) OF THE CITY CODE OF ORDINANCES (DF – DOWNTOWN FRINGE / DIMENSIONAL STANDARDS – FRONT YARD SETBACK); SECTION 14-04-21.2(3)(F) OF THE CITY CODE OF ORDINANCES (DF – DOWNTOWN FRINGE / DIMENSIONAL STANDARDS – REAR YARD SETBACK); AND SECTION 14-03-11(10)(E) OF THE CITY CODE OF ORDINANCES (LANDSCAPING AND SCREENING / BUFFER YARD STANDARDS) - LOTS 4-6, BLOCK 16, NORTHERN PACIFIC ADDITION (112-120 EAST AVENUE A AND 506-510 NORTH 2ND STREET)

Chair Marback stated the applicants, Boutrous Group, LLP and 506 Properties, LLC, are requesting variances to allow for the construction of four multi-family buildings and associated attached garages and one detached garage to be located on Lots 4-6, Block 16, Northern Pacific Addition (112-120 East Avenue A and 506-510 North 2nd Street).

Ms. Wollmuth said the proposed variance requests are located within the Conditional DF – Downtown Fringe zoning district and the zoning district requires development of this property be restricted to residential uses. She said the proposed multi-family development would comply with this restriction, and would also need to meet standard zoning requirements, including setbacks and buffer yards for the underlying DF –

Downtown Fringe zoning district. Ms. Wollmuth added that a copy of the conditional zoning identifying the restriction is attached to the staff report.

Ms. Wollmuth further explained that these variances include a reduction of the required front yard setback for Buildings A, B, and C, located along the south side of the buildings adjacent to East Avenue A, from 15 feet to 7 feet; a reduction of the front yard setback for Building C, located along the east side of this building adjacent to North 2nd Street, from 15 feet to 13 feet for the residential portion of Building C, and from 15 feet to 11 feet for the attached garage portion of Building C; a reduction of the required front yard setback for Building D, located along the east side of the property adjacent to North 2nd Street, from 15 feet to 7 feet; a reduction of the required rear yard setback for the detached garage located along the west side of the property from 10 feet to 2 feet; and a reduction and elimination of portions of the required landscape buffer from 15 feet to between 0 feet and 8 feet along the west side of the property.

Ms. Wollmuth closed by saying the zoning ordinance requires a buffer yard be installed between multiple family residential use (3 or more units) and any commercial, industrial or institutional use in all zoning districts except when both properties are located within the Downtown Core (DC) and / or Downtown Fringe (DF) zoning districts. The proposed multi-family development is located with the DF – Downtown Core zoning district, and is adjacent to single family residential uses, immediately west of the property, that are outside of these zoning districts.

Ms. Wollmuth gave an overview of the request, including the following findings:

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area and within the Conditional DF-Downtown Fringe zoning classifications.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Ms. Wollmuth said staff recommends reviewing the findings contained in the staff report, identifying a hardship and modifying the findings as necessary to support the decision of the Board.

Mr. Seifert asked if it is four multi-family buildings or five. Ms. Wollmuth said it would be four multi-family buildings with attached garages and one detached garage.

Mr. Janssen asked if there as an easement on the west side of the property for the utilities and overhead power line.

Ms. Wollmuth said the property was platted in 1902 so if there is an easement it would have likely been added after the fact by a utility company. She said that is an item will be reviewed during the site plan review process.

Ms. Clark asked if the property was not in the DF zoning district, what would the setback requirement be.

Ms. Wollmuth said the requirement for the side and rear yard setbacks, and required landscaping buffer, is because the project is adjacent to existing single-family homes. She said if this property were located one block east, those items would not be required and a variance would not be needed.

Mr. Hoff said this owner had a previous, similar request for a variance.

Ms. Wollmuth said there was a request for a variance to the east across North 2nd Street to reduce required parking and, since the parking ordinance was revised recently, this district no longer requires off-street parking.

Tory Jackson, Attorney for Boutrous Group and Lander Group, said the design of the site was driven by the topography of the location. He said there is a 24-foot elevation change from the northwest to the southeast which pushed the buildings in a certain direction in order to avoid ADA non-compliance, access and construction issues. He said they wanted to avoid leveling the site and needing a retaining wall if possible. He added that the property has unique zoning as it is the only DF zoned property on the block and it is adjacent to R5 and RM zoning districts. He said there usually would not be a setback required in this zoning district, but it does not seem a suitable transition to suddenly have a fifteen-foot front yard setback. He said they are not asking for a zero-foot front yard setback, just less than 15 feet for a subtler transition. He said their requests are the minimum needed to have a viable project. He said the single-family area to the west already has a substantial buffer of mature trees, shrubs and fences, so they would not be visible to each other, and they intent on adding trees, shrubs and fences to this property as well. Mr. Jackson said the natural question is can the project be built smaller and that was considered, but they wanted to have a better transition into the historic area to the west by adding porches and other historical aesthetics. He said there will be fewer buildings than what was on the property before and it must be financially viable to develop this site as well. Mr. Jackson then said this development would also further a number of the goals of the City's Infill and Redevelopment Plan.

Mr. Seifert said the 4-unit structure to the north would be the last structure on the block then. Mr. Jackson said that is correct and they have discussed a joint access easement with the neighbor to the north as well.

Tobias Marmon, Marmon Construction, said the two garages on the far end would be converted to surface parking in order to help further buffer along the west side so a variance from the rear yard setback requirement is no longer needed.

Mr. Hoff asked how many units would be in the buildings. Mr. Jackson said it would be 23 units total.

Mr. Wohl asked if the houses on the site are to remain. Mr. Jackson said there is one to be torn down yet.

Mr. Janssen asked if the units could be made smaller in order to avoid needing a variance.

Mr. Jackson said they looked at some smaller and some larger and, to accommodate the market and the topography, this was the decided footprint.

Chair Marback opened the public hearing.

Written comments in opposition to this request are attached as Exhibit A.

There being no further comments, Chair Marback closed the public hearing.

Ms. Wollmuth said the request for a variance from the rear yard setback requirement can be eliminated based on the new information given at this meeting.

Ms. Combs reminded the Board that they do need to fact find, the request must be the minimum variance and all other findings needed. She said they have talked in the past about how they are trying to provide guidance and typically there would be a uniqueness to the property, such as the topography, not a financial hardship,. She said staff is devising a list to reference of the most common hardships such as legal requirements of buildings codes, current laws or a change in law since the property was platted.

Mr. Janssen said the topography does not seem to be a hardship here as the ADA requirements can still be constructed and made buildable. He said he feels the property would be overbuilt and they could dig for a retaining wall. He said that would cost more, but the topography for this site is not the hardship. He said they are asking too much of a site and the buffers are critical in this area. He closed by saying if they had wanted to they could have written a PUD zoning ordinance by now.

Ms. Combs said she agrees, however, the counterfactor is that they could build but the design factor desired harmonizes better with the surrounding area.

Chair Marback said he is more inclined to approve the requests because of the transition of the residential appearance rather than a commercial appearance.

Mr. Seifert said this would be a great change for this corner property.

MOTION: A motion was made by Ms. Clark to approve the variances from Section 14-04-21.2(3)(d) of the City Code of Ordinances (DF – Downtown Fringe / Dimensional Standards – Front Yard Setback); and Section 14-03-11(10)(e) of the City Code of Ordinances (Landscaping and Screening / Buffer Yard Standards) to allow for the construction of four multi-family buildings and associated attached garages and one detached garage to be located on Lots 4-6, Block 16, Northern Pacific Addition (112-120 East Avenue A and 506-510 North 2nd Street), based on the special circumstances of the slope of the property and the project being in harmony with the adjacent neighborhood and the hardship of the ADA requirements needs being impacted by the topography. The motion was seconded by Mr. Seifert and with Board Members Clark, Hoff, Seifert, Wohl and Marback voting in favor of the motion and Board Member Janssen opposing the motion, the motion was approved and the variance approved by the Board of Adjustment.

OTHER BUSINESS

Ms. Combs asked if any other information is needed from her on guiding the motion to approve a variance.

Mr. Wohl asked how the minimum variance needed is to be determined. He said they essentially could deny every variance request based on that.

Ms. Combs said extra information can be given from staff on fact finding as Ms. Wollmuth is highly educated in that area, but ultimately it is the decision of the Board.

Ms. Combs said staff could give a recommendation on some, but likely not all requests.

Ms. Wollmuth said she would prepare process information for variance requests for discussion during a future meeting

Jannelle said they could approve a conditional variance, but the problem comes with getting the applicant to agree to a condition on the spot.

Mr. Hoff said they also cannot call an applicant back for discussion after the motion has been made.

Ms. Combs said that is correct unless the Chair allows it.

Mr. Janssen said there are other avenues to get passage, such as a PUD ordinance and he would like to know if any other options are offered.

ADJOURNMENT

There being no further business, Chair Marback declared the meeting of the Bismarck Board of Adjustment adjourned at 5:35 p.m. to meet again on September 3, 2020.

Respectfully Submitted,

Hilary Balzum
Recording Secretary

APPROVED:

Michael Marback, Chair

DRAFT

8-1-2020

AUG 03 2020

Dear Board Members,

I wish to state my opposition to the variance, 14-04-21.2(3)(6), being granted to the Boutrous Group LLP. Many of the properties owned by the Boutrous Group LLP and the Boutrous family are dilapidated and represent urban blight in my neighborhood. I think asking for a variance is exceptional when the current properties are not taken care of, lawns not mowed, trash in yard, peeling paint, poor condition of the homes. I do welcome something new but, I think it should be built in a manor that conforms to the current building code. If the current code is too constrictive then let the citizens of Bismarck vote on the ballot to change it.

Thank you for your consideration.

A handwritten signature in dark ink, appearing to read "William Kincaid", with a stylized, sweeping flourish at the end.

William Kincaid and Tanna Kincaid
Home owners
112 East Ave. B
Bismarck ND 58501